

# Indiana Department of Environmental Management

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*(Text does not include verbatim comments)*

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Good Morning. It's a pleasure for me to be with you yet again to bring you up to date on our joint efforts to protect one of Indiana's most important resources . . . our water.

As I prepared my remarks for today, I reviewed the topics that I have shared with you in the past and found that there are repetitive themes. In fact, I was starting to get that feeling of living in a soap opera. Looking at this audience, I would guess that most of you are as about familiar with soap operas as I am, given how much time I spend at home during weekdays, which would be less than none. But what I do know of soap operas is from when I was a kid in school and I would get to see them while stuck at home whenever I was sick, which was not that often. I remember that no matter how long inbetween my various childhood illnesses, virtually nothing had changed on the soaps - they could string out the planning of a weekend tryst for six months! Well, I am here to tell you we have broken the cycle at IDEM and I am happy to report on the conclusions of many long-term sagas that we have all been living through.

Since I last spoke to you,

- The mystery of "Who Killed the Fish in the White River" has been solved and the White River Fish Kill litigation was brought to an extremely satisfactory culmination,
- The saga of "Will IDEM Ever Issue Those Permits to the City of Indianapolis" finally came to a celebrated conclusion,
- In a variation on a theme, "Who Wants to Get the Billionth (SRF) Dollar" is about to be aired,
- The never ending story of "The First-Ever Ground Water Quality Standards Rule" for Indiana finally ended with final adoption by the Water Pollution Control Board (WPCB), and
- The rather tumultuous saga of "What's to be Done with all of that Animal Waste" finally reached its conclusion with final adoption by the WPCB of the first-ever rules for construction and operation of confined feeding facilities.

## **SECURITY**

So, you can see that much has happened during the past year, but on a more serious note, before I go into further detail on these subjects, there is another matter which bears discussing. And that is measures we all must think about putting into place as a result of the events of September 11. I was greatly impact by the events of Sept. 11 - it is hard being responsible for an environmental entity, knowing that the work we are involved in could help, or hurt, people. Unfortunately, we must now consider putting in place security measures to protect our citizens. It is a reality that just a year ago did not hold the same relevance, and was barely discussed. Now, world events force us to think about the unthinkable, focusing our attention on a new type of man-made threat

that has the potential to significantly affect public health as well as our steadily improving environment.

Because safe, clean drinking water flows into virtually every home in Indiana, we concentrated our first responsive efforts in reaching out to public water system owners and operators. That was followed by reaching out to hazardous materials handlers, and ultimately, wastewater plant owners and operators. I would like to run through the security cautions recommended, as I know national and local security is on everyone's mind these days.

*Security Credo: "detect, delay and respond."*

- Detect: Individuals with wrongful intentions will often be deterred if they think their actions might be detected;
- Delay: others may be deterred if they are delayed by way of security measures;
- Respond: In the worst case scenario, should sabotage actually occur, utility staff must respond quickly and appropriately to keep the consequences to a minimum.

*Immediate, common sense steps to secure facilities:*

- Make it a rule to lock doors and set alarms at treatment plants and lift stations,
- Tell employees to ask questions of strangers in your facilities,
- Limit access to facilities and indicate restricted areas by posting "Employees Only" signs,
- Add overhead lights in parking lots, treatment units and other areas with limited staffing,
- Invite local law enforcement officials to become familiar with your facility and establish a protocol for reporting and responding to threats, and
- Discuss detection, response and notification issues with local public health officials and establish a protocol.

*In addition to this general information, some of the particular issues addressed in our letter to utilities and wastewater treatment plants include advice to:*

- Closely monitor the use of chlorine gas and increase surveillance at chlorine storage, loading and use facilities and consider using alternatives to chlorine gas,
- Check manholes and storm sewers, paying special attention to the possibility of unauthorized people adding liquid or solid materials,
- Increase surveillance and/or review security measures at treatment units and lift stations, and
- Review security procedures with industrial and other large customers, as their operations may pose a threat to the wastewater treatment plant, especially if you have customers such as chemical plants or other facilities that use or generate toxic materials.

It still seems somewhat surreal to me that we are having to address these issues, and I certainly hope that our newly adopted security measures are never put to the test. But it certainly is better to be prepared for something which never happens than to be caught unprepared when we could have done something. So, please do your part to take these suggestions seriously.

Despite the occurrences of the past two months, our leaders have encouraged us to go forward with our lives...

## **WHITE RIVER/GUIDE**

So, in that vein, let me bring you up to date on IDEM business over this past year. In regards to

the mystery of "Who Killed the Fish in the White River" and the conclusion of the suspenseful litigation; I am pleased to report to you today that the State of Indiana and the federal government very successfully settled the most significant suit coming out of the White River fish kill event of nearly two years ago. Not only was the case resolved in record time - just over one year from the filing of the complaint - but the amount of the settlement was truly significant. Additionally, of great significance, was the guilty plea on federal criminal charges. The Guide Corporation plead guilty to federal criminal charges and paid nearly \$14M in civil penalties and natural resources damages. As a testament to the successful conclusion of this matter, nationally known environmentalists hailed the settlement as both fair and sufficiently punitive that would-be polluters will no longer look upon their environmental transgressions as just "the cost of doing business."

As Governor Frank O'Bannon said:

**"We have sent the message to would-be polluters that we will vigorously pursue restitution and penalties against those who fail to heed our warning. And we've sent the message that Indiana's rivers and streams belong to its citizens and that ownership may not be stolen by a thoughtless or deliberate polluter."**

The river continues to heal itself . . . with man's help. \$6M of the settlement is specifically for natural resources damages and will be used toward restoration activities along the river between Anderson and Indianapolis. While *specific* projects have yet to be identified, all of the projects will fall into the broad categories of riverbank and wildlife habitat restoration, water quality improvements, and greater recreational access to the waters of the White River.

As unfortunate as the fish kill event was, we hold in our hands an opportunity to make the White River a better place for the use and enjoyment of our citizens and a better habitat for aquatic life and wildlife.

## **INDIANAPOLIS PERMIT**

Then there was the saga of "Will IDEM Ever Issue Those Permits to the City of Indianapolis?" I am very pleased to inform you that this too has been brought to conclusion. On October 26 we issued wastewater permits to the City of Indianapolis, which will markedly improve the water quality of the White River and her tributaries. Many other communities throughout Indiana have watched with interest how IDEM wrote these permits because they are the first major CSO permits issued subsequent to passage of Senate Enrolled Act 431 in 2000.

### *Long Term Control Plan/Use Attainability Analysis Guidance Document*

An important component of the Indianapolis permits, as well as for all CSO communities, is the Long Term Control Plan. Senate Enrolled Act 431, called for IDEM to create a Combined Sewer Overflow Long-term Control Plan/Use Attainability Analysis Guidance Document. After a great deal of public input, the final version of that Guidance Document will be presented to the WPCB at its meeting tomorrow and should be published in the Indiana Register in January. The guidance document describes the steps necessary to develop an adequate long-term control plan. It also describes what a community must do to document the need for a "temporary suspension"

of water quality standards. In order to be granted such a "temporary suspension", a community must do two things:

1) identify that point at which the cost of implementing CSO controls exceeds the benefit from the control measures, referred to as "the knee of the curve", and

2) demonstrate that full attainment of the water quality standards will cause a widespread economic and social hardship on the community.

Should relief be granted from the water quality standards, some overflows could be allowed into our waterways during extreme wet-weather events. However, communities must meet several criteria before a temporary suspension of the water quality standards can be granted. Among these criteria, a community may receive a temporary suspension, if:

- IDEM has approved the community's long-term control plan and it is incorporated into the community's NPDES permit,
- The community specifies the designated uses and water quality standards to be suspended during a wet weather event, and
- The community has shown the need for the suspension by demonstrating a widespread economic and social impact via the Use Attainability Analysis, which has been approved by EPA.

#### *Notification Rule*

A separate but complementary rule we continue to work on, pursuant to SEA 431, is the community notification rule that is designed to alert residents, especially those likely to be directly affected, about CSOs events. The purpose of the rule is to teach the public about the health implications of water tainted with raw sewage so that they can protect themselves and their children. Newly issued NPDES permits are to contain similar provisions as that which will be contained in the rule.

#### *IKE Petition*

While on the subject of CSOs, I have been asked to address the petition for rulemaking filed with the WPCB by the citizen group Improving Kids' Environment, referred to as "IKE". The petition seeks a rulemaking to revise the wastewater construction permit rule to further restrict the approvals of sewer line construction permits for CSO communities.

IKE characterizes the petition as a "no net increases" approach where alternatives would have to be identified for each project to assure that there is no increased overall flow into the system.

Others have suggested that it is a no growth approach which would effectively ban many if not most new hook-ups. To date, IDEM has focused on working with the CSO communities and the public on the development of the long-term control plans. We believe that these plans are the most important element for improving the water quality in streams affected by CSOs.

Likewise, we are in the midst of reviewing our policies for implementing the wastewater construction permit rule for all situations, including for systems on sewer bans, early warning of storm sewer overflows, and combined sewer overflows. We do believe that a public discussion is needed on these policies. Our intention was to begin a dialogue with interested persons on these policies and then make decisions about whether new policies, rules or laws are needed to implement sound public policies in these situations. We will now work with the Water Pollution Control Board and others and pursue those public discussions.

The WPCB has set up a series of five meetings throughout the state to solicit comments on the IKE petition. Three opportunities remain yet this week; tonight in Indianapolis at the IVY Tech facility on North Meridian Street, in Evansville tomorrow evening, and in Jeffersonville on Thursday night.

## **SRF**

Switching gears completely, or in keeping with the theme, changing channels, let's move on to "Who Wants to get the Billionth Dollar". We, speaking on behalf of the state and federal government, realize that what we ask from water systems comes with a price to local communities. But a helping hand is extended with the State Revolving Fund Program. The SRF program represents a significant commitment to help communities fix and replace aging drinking and wastewater facilities. The amount of good these monies do is immeasurable, but this incredible sum - \$1 billion - is certainly a good indicator of how much this program means to Hoosiers.

I believe that by the end of this week we will be ready to announce the likely recipient of the Billionth Dollar, so stay tuned!

While we have made tremendous progress in improving Indiana's water facilities under Gov. Frank O'Bannon's leadership, many needs remain: 1996 Clean Water Needs Survey to wastewater systems - more than \$5B needed for wastewater infrastructure improvements. Yr 2000, survey repeated - need had risen to about \$8B. The value and need for the SRF program is apparent.

To quote Gov. O'Bannon again,

**"Government, at its best, ensures that citizens receive reliable, basic services that result in a high quality of life. Nothing is more basic - and important - than a stable source of clean water."**

## **GROUNDWATER RULES**

Governor O'Bannon's quote provides a great segue into what seemed like the never-ending story of the adoption of the state's first-ever ground water standards. A success only about 12 years in the making! This rule sets numeric and narrative ground water standards for all drinking water drawn from wells. The rule acts as a guide to help IDEM, DNR, the Department of Health, Office of the State Chemist and the Office of the State Fire Marshal in regulating activities that may affect the quality of ground water. With this new ground water rule, all ground water is classified as drinking water unless special classification is requested because of existing ground water contamination.

These specific regulations will help us protect the future of Indiana's ground water. It provides a strong foundation for state agencies, industries and natural resource professional to work from.

## **CFO RULE**

Changing channels once again, another saga, not quite as long in the making, but almost as exciting, was successfully concluded with the final adoption by the WPCB of Indiana's first CFO rule: an adaptation of Indiana's 1971 Confined Feeding Control Law. The rule's principle purpose is to protect the state's waterways from contamination. Manure contains high levels of

nitrogen which obviously is very bad for water quality and the health of aquatic life. IDEM, with input from livestock producers, animal scientists, citizens and environmental groups, developed a set of standards that all CFOs must follow. Indiana farmers have a long history of being good stewards of the environment, and practices required by the CFO rule - testing manure, checking equipment, monitoring storage facilities - are usual routines around the great majority of farms. Of the CFOs IDEM inspected over the past two years, an average of 95% had no or only minor maintenance problems.

### **319 GRANTS**

I am about to get a reputation as a channel surfer, but here we go again. I want to use my remaining time to update you on our Section 319 grant funds targeted toward nonpoint source water quality issues; the next challenge in cleaning up our water. Indiana typically passes through about \$4M from the EPA for local projects. We encourage these funds to be used to develop and implement holistic watershed management plans, focusing on nonpoint source water quality impairments. Beginning in federal fiscal year 2003, which begins Oct. 1, 2002, about half of the 319 dollars must go toward projects that include a nonpoint source TMDL component. Fundamental to the task of improved water quality is the philosophy that before you can clean up the water, you must know what pollutants are in it and where they come from - which is the purpose of TMDLs. Using 319 money for this purpose makes good sense.

### **WETLANDS**

Finally, before I lay down my remote control, I want to introduce you to IDEM's wonderful new series of brochures about the importance of Indiana's remaining wetlands. They are titled *Indiana's Wetlands; Dredging?, Filling? Excavating?*; and, my personal favorite, *Do I Need a Permit for That?*

On the subject of wetlands, I would be remiss if I did not advise you that this is one IDEM rulemaking saga for which I cannot yet report a happy ending to. We recently completed a comment period on public notice of rulemaking and I think we are shooting to take the rule to the WPCB by the end of this year or beginning of next year.

Now, back to our previously scheduled program, the brochures. The source of the funding for the brochures, as well as a video about wetlands and a regulatory guidebook, was from an EPA Wetland Protection Grant. States compete for these grants each year with proposals that will build on or improve existing wetlands programs. The purpose of the grant is to expand public awareness of regulatory programs at the state and federal level that protect wetlands.

The brochures are currently available and the video and the regulatory guidebook will be available in 2002. The information lets people know how to contact IDEM, how to apply for permits and why we regulate wetlands. Our regulatory customers, including developers, farmers, and local units of government, should find this information most helpful. But another benefit of this effort is that it also has educational components targeted to middle school children.

And in the end, that's what our efforts are all about. Protecting our environment for our children and grandchildren. I'm optimistic about the prognosis for our environment because more and more schools are offering environmental curriculums at all grade levels. If we teach our children

today about the importance of environmental stewardship, reaching our goal of a cleaner, healthier environment is a foregone conclusion. It will happen.

Thank you again for letting me spend a few minutes with you. Coming here each November is a tradition which I look forward to.